IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision 4272 of 2006.
Date of Decision: 03rd March, 2008.

Harpal Singh ....Petitioner
through
Mr. Avnish Mittal, Advocate

Versus

Sardool Singh Bhui
...Respondent
through
Mr. R.N.Moudgil, Advocate.
Mr. Munish Jolly, Advocate.

CORAM:

HONBLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.(ORAL)

This revision petition is directed against the order dated 12.5.2006 passed by learned Civil Judge (Junior Division), Kharar whereby an application under Order 6 Rule 17 C.P.C. moved by the petitioner-plaintiff for amendment of the plaint, has been dismissed.

The facts may be noticed briefly.

On 5.8.1998 the respondent-defendant entered into an agreement to sell Plot No. 1133, Sector 70, SAS Nagar, Mohali in favour of the petitioner for a sale consideration of Rs.5,41,521/- plus premium of Rs.14 lacs. The petitioner paid a sum of Rs.4,70,000/- to the respondent-defendant towards Earnest money on different dates. It is alleged that since the respondent-defendant, due to some

dispute with the PUDA Authorities who had allotted the subject plot to him, could not obtain No Dues Certificate and, thus, could not execute the sale deed on or before the expiry of cut-off date, i.e., 31.10.1998, the petitioner-plaintiff rescinded the said agreement vide legal notice dated 12.2.1999 and thereafter filed a suit for recovery of the amount of earnest money paid by him, on 7.8.2000.

During the pendency of the afore-stated suit, the petitioner-plaintiff moved an application for amendment of his plaint so as to incorporate the relief of “specific performance of the contract”. The aforesaid application was filed by him on 16.8.2004 on the ground that during the pendency of the suit, the respondent-defendant has now got the title cleared through a writ petition filed by him in this Court which was allowed on 26.4.2004 and was, thus, in a position to execute the sale deed in terms of the agreement to sell dated 5.8.1998.

The afore-stated application has, however, been dismissed by the learned trial Court after observing that as per the petitioner-plaintiff's own case the respondent-defendant had got the plot restored from the PUDA Authorities on 22.12.1999, i.e., much before the filing of the suit for recovery on 7.8.2000, therefore, the prayer for amendment of the plaint so as to incorporate the relief of specific performance of the contract, at this stage, is only because of the sudden rise in the prices of the real estate.

I have heard learned counsel for the parties and with their able assistance have gone through the relevant documents.

There appears to be no serious dispute to the fact that the resumption order by PUDA authorities was set aside/withdrawn and the allotment of the plot in question was restored in favour of the respondent-defendant on 22.12.1999. There might still be some dispute between the respondent-defendant and the PUDA authorities which led him to file a Civil Writ Petition in this Court. This, however, never precluded the petitioner-plaintiff to file a suit for specific performance and to prove the inability of the respondent-defendant to perform his part of the contract. The petitioner rather rescinded the contract and thereafter opted to file a suit for recovery of the earnest money. The respondent-plaintiff now, therefore, can not turn around and seek a decree for specific performance of the contract.

No interference with the impugned order is, thus, called for.

Dismissed.

The parties through their counsel are directed to appear before the learned trial Court on 28.3.2008.

March 03, 2008. ***(SURYA KANT)***
dinesh ***JUDGE***